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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 97-178
	)	RM-8329
Amendment of Section 73.202(b)	)	RM-8739
Table of Allotments)	
FM Broadcast Stations)	
(West Hurley and Rosendale,)	
New York, North Canaan and)	
Sharon, Connecticut))	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Chief, Allocations Branch

**COMMENTS ON NOTICE OF PROPOSED
RULE MAKING AND ORDER TO SHOW CAUSE**

Aritaur Communications, Inc. ("Aritaur"), by its attorneys and pursuant to Section 1.420 of the FCC's Rules hereby files its Comments on the "*Notice of Proposed Rule Making and Order to Show Cause*" (herein "*NPRM*," DA 97-1697, released August 15, 1997, in the above-captioned docket. Aritaur supports the allotment of Channel 255A at West Hurley, New York, as that community's first local aural transmission service, and opposes the allotment of Channel 255A to Rosendale, New York. In support whereof, the following is shown:¹

Preliminary Statement

Raymond A. Natole has requested the allotment of Channel 255A to West Hurley, New York. Sacred Heart University, Inc. ("SHU") has proposed the allotment of Channel *277A to North Canaan, Connecticut, as a reserved

¹ Comments are due by October 6, 1997, thus, these Comments are timely filed.

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noncommercial educational channel. To accommodate the allotment of Channel *277A to North Canaan, SHU proposes to substitute Channel 273A for 277A at Sharon, Connecticut, and Channel 255A for Channel 273A at Rosendale, New York. Aritaur is an applicant for construction permit for a new FM station to operate on Channel 273A at Rosendale that would be required to amend its application if Channel 255A were allotted to Rosendale. Therefore, Aritaur is an interested party and has standing to file these Comments.

Channel 255A Should Be Allotted to West Hurley, New York

West Hurley is listed in the 1990 U.S. Census as a census designated place with a population of 2,252 persons. The Commission found no reason to question the community status of West Hurley, but invited SHU to bolster its showing concerning West Hurley's status. Aritaur will await review of any such comments SHU may file and address them, if necessary, in reply comments.

However, Aritaur supports the allotment of Channel 255A to West Hurley. A station operating on Channel 255A at West Hurley could provide a new 60 dBu service to 280,818 persons within an area of 3,055 square kilometers in addition to providing West Hurley with its first local aural transmission service.

North Canaan Does Not Appear to Be Community for Allotment Purposes

Although the *NPRM* (and SHU's Petition for Rule Making on which it was based) states that North Canaan, Connecticut, is an "incorporated community," with a 1990 population of 3,284, it appears that although North Canaan is an incorporated "town" it may not be a "community" for allotment purposes. Attached is a Technical

Statement that indicates that the U.S. Census does not show that North Canaan is listed in the List of Incorporated Places or List of Census Designated Places. Review of the *Rand-McNally Commercial Atlas and Marketing Guide*, 1997 Edition, reveals that the “town” of North Canaan includes the community of East Canaan. A spokesperson for the Selectmen of North Canaan, Dorothy Paviol, told counsel that North Canaan also includes the communities of Sodom and Canaan Valley. Counsel briefly searched the world wide web for information on governmental services, businesses and cultural activities peculiar to North Canaan and found no such information. No specific identification of such community attributes was made in the petition for rule making beyond a mere blanket statement of their existence.

A serious question is raised as to the *bona fides* of North Canaan as a community for allotment purposes. The Commission cannot allot Channel *277A to North Canaan, if it does not so qualify. Examination of the map of North Canaan printed in the *Rand-McNally Commercial Atlas and Marketing Guide*, 1997 Edition, reveals that North Canaan appears to be merely a subdivision of Litchfield County, Connecticut. In *Southwestern Broadcasting Corp.*, 38 RR2d 39, 40 and n. 1, the Commission stated that “Counties, as such, are geographically too extensive to qualify as licensed communities for broadcast stations within the meaning of Section 307(b) of the Communications Act.” SHU has the burden of providing additional information to support its claim of community status. In *Trade, Tennessee*, 69 RR 2d 1731 (1991) the Commission refused to find Trade to be a community for allotment purposes. Trade was listed in the *Commercial Atlas* as having a population of 150, but was neither

incorporated nor a census designated place. It was not dispositive of community status that Trade was included in a census enumerated district since such districts often include a number of communities and isolated pockets of population. No information had been provided with respect to the existence of any local government or businesses which identify themselves with Trade, nor had it been shown that the residents received any municipal services. In short, North Canaan, like Trade, does not appear to qualify for an allotment of an FM channel. Unless this issue is resolved in Reply Comments in favor of North Canaan's community status, the allotment should be made to West Hurley and North Canaan should not be considered.

Other Public Interest Factors

Additionally, while Channel 255A can be allotted to West Hurley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, Channel 277A can be allotted to North Canaan, only with a site restriction to avoid a short-spacing to Station WDRC-FM, Hartford, Connecticut, Station WHRL, Albany, New York, and Station WODS, Boston, Massachusetts. Channel 255A can be allotted to Rosendale only with a site restriction of 10 kilometers north to avoid a short-spacing to Station WPLR, New Haven, Connecticut, and Station WFSO, Olive Bridge, New York. That is an ineffective use of the frequency.

Channel 273A, which is currently allotted to Rosendale, New York, and for which ten parties have applied for construction permits, requires no site restriction. The use of Channel 255A would require each of the applicants, including Aritaur, not

only to amend their applications to specify the new channel, but presumably to find new transmitter sites as well. This burden should be considered by the Commission in making its public interest determination on the proposals before it.

Conclusion

In light of the question as to whether North Canaan is a community for allotment purposes, the burden imposed on ten applicants that would arise by allotting Channel 255A to Rosendale, and the simplicity of allotting Channel 255A to West Hurley, Aritaur urges the Commission to allot Channel 255A to West Hurley, New York.

Respectfully submitted,

ARITAU COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to be "Gary S. Smithwick", written over a horizontal line.

By:

Gary S. Smithwick
Its Counsel

SMITHWICK & BELENDIUK, P.C.

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October 6, 1997


ATTACHMENT

Technical Statement

I, Clifton G. Moor, am a officer and engineer of Bromo Communications, Inc., Technical Consultants to television and radio stations. I have been asked to review the proposed addition of Channel 277A to North Canaan, CT. Although the proponent, Sacred Heart University, Inc. had represented that North Canaan is an incorporated city, I do not find it in the List of Incorporated Places or list of Census Designated Places. A copy of that list is attached as Exhibit #1.

Please find Exhibit #2 which indicated that North Canaan is a *town*. This list is from the same census as referred to above.

These statements are true and correct to the best of my knowledge.


Clifton G. Moor
Bromo Communications, Inc.

October 6, 1997

Table 5. Population of Places: 1960 to 1980

(For changes in boundaries of incorporated places since 1970, see table 4. For meaning of symbols, see Introduction)

Incorporated Places Census Designated Places		Counties		1980	1970	1960	Incorporated Places Census Designated Places		Counties		1980	1970	1960
Ansonia city	New Haven			19 039	21 160	19 819	Terryville (CDP)	Hartford			1 324	1 337	...
Avon (CDP)	Hartford			1 434	...	...	Terryville (CDP)	Litchfield			5 234	...	...
Berlin borough	Hartford			860	881	833	Torrington city	Litchfield			30 987	31 952	30 045
Bethel (CDP)	Fairfield			8 755	...	...	Trumbull (CDP)	Fairfield			32 989	...	...
Bethlehem (CDP)	Litchfield			1 762	...	...	Uncasville (CDP)	New London			1 597	1 750	1 381
Bloomfield (CDP)	New Haven			5 438	2 080	2 371	Wallington (CDP)	New Haven			17 821	...	...
Bridgewater city	Fairfield			142 546	154 542	156 748	Waterbury city	New Haven			103 264	108 033	107 130
Bristol city	Hartford			57 370	55 487	45 499	Waterford (CDP)	New London			2 736	...	...
Canaan (CDP)	Litchfield			1 160	1 083	1 146	Westport (CDP)	Hartford			2 249	2 396	...
Canton (CDP)	Hartford			1 680	...	...	Westbrook (CDP)	Middlesex			2 035	1 509	...
Cheshire (CDP)	New Haven			5 722	...	...	West Hartford (CDP)	Hartford			61 301	...	...
Chester (CDP)	Middlesex			1 388	1 569	1 414	West Haven city	New Haven			52 184	52 851	43 002
Clinton (CDP)	Middlesex			3 168	5 957	2 693	West Mystic (CDP)	New London			3 364	3 415	3 268
Colchester borough	New London			3 190	3 529	2 260	Westport (CDP)	Fairfield			25 290	...	...
Collierville (CDP)	Hartford			2 555	2 897	1 682	West Simsbury (CDP)	Hartford			2 140	1 419	...
Conn. Towers-Mauritius Park (CDP)	New London			9 465	9 791	3 457	Wethersfield (CDP)	Hartford			26 013	...	...
Danbury city	Fairfield			60 470	50 781	22 928	Williamstown city	Windham			14 652	14 402	13 881
Danbury borough	Windham			4 553	4 580	4 642	Windsor (CDP)	Hartford			17 517	...	...
Darien (CDP)	Fairfield			18 892	...	...	Windsor Locks (CDP)	Hartford			12 190	...	...
Deep River (CDP)	Middlesex			2 493	2 333	2 166	Winthrop (CDP)	Litchfield			8 092	...	...
Durby city	New Haven			12 346	12 599	12 132	Woodbury (CDP)	Litchfield			1 290	1 342	1 038
Durham (CDP)	Middlesex			2 641	...	...	Woodmont borough	New Haven			1 797	2 114	...
East Brooklyn (CDP)	Windham			1 251	1 377	1 213							
East Haverhill (CDP)	Middlesex			2 152	1 982	1 574							
East Hartford (CDP)	Hartford			52 563	...	...					
East Haven (CDP)	New Haven			25 028	...	...					
Enfield (CDP)	Hartford			8 151	...	...					
Essex (CDP)	Middlesex			2 501	2 473	1 470							
Farmington borough	Middlesex			41	45	36							
Gales Ferry (CDP)	New London			1 191	...	...					
Georgetown (CDP)	Fairfield			1 834	1 101	...							
Glastonbury (CDP)	Hartford			7 049	...	...					
Groby (CDP)	Hartford			1 912	...	...					
Groton city	New London			10 086	8 983	10 111							
Gulfport (CDP)	New Haven			2 555	3 682	2 420							
Hartford city	Hartford			136 592	158 017	162 178							
Hartford (CDP)	Hartford			3 293	...	...					
Hazardville (CDP)	Hartford			5 436	...	...					
Higganum (CDP)	Middlesex			1 660	...	...					
Jewett City borough	New London			3 294	3 372	3 608							
Kensington (CDP)	Hartford			7 502	...	...					
Lake Pocotopung (CDP)	Middlesex			2 137	1 315	1 314							
Litchfield borough	Litchfield			1 489	1 559	1 363							
Madison (CDP)	New Haven			2 069	4 310	416							
Manchester (CDP)	Hartford			31 058	...	...					
Manchester Center (CDP)	Tolland			1 043	...	...					
Martinsburg (CDP)	Hartford			1 039	...	...					
Martins city	New Haven			57 118	55 959	51 850							
Middlebrook city	Middlesex			39 040	36 924	33 250							
Milford city	New Haven			49 101	50 858	41 662							
Monterville (CDP)	New London			1 711	1 688	1 060							
Monrovia (CDP)	Middlesex			1 179	1 352	1 103							
Monrovia (CDP)	Windham			3 308	3 376	2 760							
Mystic (CDP)	New London			2 333	2 568	2 536							
Muskegon borough	New Haven			26 436	23 034	19 511							
New Britain city	Hartford			73 840	83 441	82 201							
New Britain (CDP)	Litchfield			1 310	1 076	1 034							
New Britain city	New Haven			128 109	137 707	152 048							
New Britain city	Hartford			26 841	...	...					
New Britain city	New London			26 842	31 680	34 182							
New Britain (CDP)	Litchfield			5 186	4 606	3 023							
New Britain (CDP)	Litchfield			1 209	...	...					
Newtown borough	Fairfield			2 022	1 963	1 261							
Newtown (CDP)	New London			3 151	3 422	2 788							
Newtown (CDP)	New London			1 406	1 371	...							
North Grovesboro Dale (CDP)	Windham			1 856	2 154	1 874							
North Haven (CDP)	New Haven			22 080	...	...					
Northville city	Fairfield			77 767	79 288	67 775							
Northville city	New London			38 074	41 739	38 506							
Oakville (CDP)	Litchfield			8 737	...	...					
Old Saybrook (CDP)	Middlesex			1 857	2 281	1 671							
Orange (CDP)	New Haven			13 237	...	...					
Pawcatuck (CDP)	New London			5 216	5 255	4 389							
Plainfield (CDP)	Windham			2 799	2 923	2 044							
Pleasure Beach (CDP)	New London			1 356	1 394	1 264							
Poquonock Bridge (CDP)	New London			2 549	3 165	...							
Portland (CDP)	Middlesex			5 914	...	...					
Puritan city	Windham			6 855	6 918	6 952							
Quaker Hill (CDP)	New London			2 052	2 155	1 671							
Quinebaug (CDP)	Windham			1 088	...	...					
Ridgefield (CDP)	Fairfield			6 066	5 878	2 954							
Saybrook river (CDP)	Middlesex			1 140	...	...					
Shelton city	Fairfield			31 814	27 165	18 190							
Shelton city	Hartford			6 303	...	...					
Simsbury (CDP)	Hartford			5 488	4 994	2 745							
Somers (CDP)	Tolland			1 643	1 274	...							
South Coventry (CDP)	Tolland			8 749	3 735	3 568							
South Windham (CDP)	Windham			1 399	...	...					
Southwood Acres (CDP)	Hartford			9 779	...	...					
South Woodstock (CDP)	Windham			1 319	...	...					
Stafford Springs borough	Tolland			3 392	3 339	3 322							
Stafford city	Fairfield			102 453	108 798	92 713							
Stratford borough	New London			1 228	1 413	1 622							
Storrs (CDP)	Tolland			11 394	10 691	6 054							
Stratford-Broadway (CDP)	Fairfield			8 890	...	...					
Stratford (CDP)	Fairfield			50 541	...	...					
Suffield (CDP)	Hartford			1 122	...	...					

NOTE: Milford city—See appendix A and table 4 footnote for New Haven County.

Exhibit #1

Table 5a. Population of Towns: 1960 to 1980

(For changes in boundaries of towns since 1970, see table 4. For meaning of symbols, see Introduction.)

Towns	Counties	1980	1970	1960	Towns	Counties	1980	1970	1960
Andover town	Tolland	2 144	2 099	1 771	Norfolk town	Uitchfield	2 156	2 078	1 927
Aspenia town	New Haven	19 089	21 160	19 819	North Branford town	New Haven	11 554	10 778	6 771
Ashford town	Windham	3 221	2 156	1 315	North Canaan town	Uitchfield	3 185	3 045	2 336
Audit town	Hartford	11 201	8 352	5 273	North Haven town	New Haven	22 080	22 194	15 935
Barkhamsted town	Uitchfield	2 935	2 066	1 370	North Stratford town	New London	4 219	3 748	1 982
Bassett Falls town	New Haven	3 995	3 546	2 886	Norwalk town	Fairfield	77 767	79 288	67 775
Berlin town	Hartford	15 121	14 149	11 250	Norwalk town	New London	38 074	41 739	38 506
Bethany town	New Haven	4 330	3 857	2 384	Old Lyme town	New London	6 159	4 964	3 068
Bethel town	Fairfield	16 004	10 945	8 200	Old Saybrook town	Middlesex	9 287	8 468	5 274
Bethlehem town	Uitchfield	2 573	1 923	1 486	Orange town	New Haven	13 237	13 524	8 547
Bloomfield town	Hartford	18 608	18 301	13 613	Oxford town	New Haven	6 634	4 480	3 292
Bolton town	Tolland	3 951	3 691	2 933	Plainfield town	Windham	12 774	17 957	8 884
Bosworth town	New London	2 135	2 036	1 590	Plainville town	Hartford	16 401	16 733	13 149
Branford town	New Haven	23 364	20 444	16 610	Plymouth town	Uitchfield	10 732	10 321	8 981
Bridgewater town	Fairfield	142 546	156 542	156 748	Pomfret town	Windham	2 775	2 529	2 136
Bridgewater town	Uitchfield	1 543	1 277	898	Powhatan town	Middlesex	8 385	8 812	7 496
Bristol town	Hartford	57 370	55 487	45 499	Princeton town	New London	4 644	3 593	4 992
Brookfield town	Fairfield	12 372	9 468	3 405	Prospect town	New Haven	6 807	6 343	4 367
Brooklyn town	Windham	5 691	4 945	3 312	Puhaton town	Windham	8 580	8 398	8 412
Burlington town	Hartford	5 660	4 070	2 790	Radding town	Fairfield	7 272	5 590	3 359
Canaan town	Uitchfield	1 002	931	790	Redfield town	Fairfield	20 120	18 188	8 165
Canaan town	Windham	3 426	2 673	1 857	Rocky Hill town	Hartford	14 559	11 103	7 404
Canaan town	Hartford	7 685	6 868	4 783	Roxbury town	Uitchfield	1 468	1 238	912
Canterbury town	Windham	1 793	1 621	1 230	Salem town	New London	2 335	1 453	925
Cheshire town	New Haven	21 788	19 061	13 383	Salem town	Uitchfield	3 896	3 573	3 309
Cheshire town	Middlesex	3 068	2 982	2 520	Salem town	Windham	1 072	1 022	684
Clinton town	Middlesex	11 195	10 267	4 166	Seymour town	New Haven	13 434	12 776	10 100
Colchester town	New London	7 761	6 603	4 648	Sharon town	Uitchfield	2 623	2 491	2 141
Colchester town	Uitchfield	1 221	1 020	791	Sharon town	Fairfield	31 314	27 165	18 190
Colchester town	Tolland	3 386	3 129	2 163	Sharon town	Fairfield	2 281	1 459	825
Colchester town	Uitchfield	1 288	1 177	1 051	Simsbury town	Hartford	21 161	17 475	10 138
Colchester town	Tolland	8 895	8 140	6 356	Somers town	Tolland	8 473	6 893	3 702
Cromwell town	Middlesex	10 265	7 400	6 780	Southbury town	New Haven	14 158	7 852	5 184
Danbury town	Fairfield	60 470	50 781	39 382	Southbury town	Hartford	36 879	30 946	22 797
Darien town	Fairfield	18 692	20 336	18 437	South Windsor town	Hartford	17 986	15 553	9 460
Darien town	Middlesex	3 994	3 690	2 968	Springfield town	New London	2 986	2 912	2 509
Derby town	New Haven	12 346	12 599	12 132	Springfield town	Tolland	9 268	8 680	7 476
Durham town	Middlesex	5 143	4 489	3 096	Stafford town	Fairfield	102 453	108 798	92 713
Eastford town	Windham	1 028	922	746	Stafford town	Uitchfield	1 791	1 853	1 397
East Granby town	Hartford	4 102	3 332	2 434	Stafford town	Windham	16 220	15 940	13 969
East Granby town	Middlesex	5 621	4 676	3 637	Stafford town	Fairfield	50 541	49 775	45 012
East Hampton town	Hartford	8 572	7 078	5 403	Stafford town	Hartford	9 294	8 634	6 779
East Hampton town	Hartford	52 563	57 583	43 777	Thompson town	Uitchfield	6 276	6 235	5 850
East Haven town	New Haven	25 028	25 120	21 388	Thompson town	Windham	8 141	7 580	6 217
East Lyme town	New London	13 870	11 399	6 782	Tolland town	Tolland	9 694	7 857	2 950
East Lyme town	Fairfield	5 942	4 885	3 407	Torrington town	Uitchfield	30 987	31 952	30 045
East Windsor town	Hartford	8 925	8 513	7 500	Trumbull town	Fairfield	32 989	31 394	20 379
Ellington town	Tolland	9 711	7 707	5 580	Union town	Tolland	546	443	383
Enfield town	Hartford	42 696	46 189	31 464	Vernon town	Tolland	27 974	27 237	16 961
Essex town	Middlesex	5 078	4 911	4 057	Vernon town	New London	1 637	1 452	1 028
Fairfield town	Fairfield	54 649	56 487	46 183	Wallingford town	New Haven	37 274	35 714	29 920
Farmington town	Hartford	16 407	14 390	10 813	Warren town	Uitchfield	1 027	827	600
Franklin town	New London	1 592	1 356	974	Washington town	Uitchfield	3 657	3 121	2 603
Glastonbury town	Hartford	24 327	20 661	14 497	Waterbury town	New Haven	103 266	108 033	107 130
Goshen town	Uitchfield	1 706	1 351	1 288	Waterbury town	New London	17 843	17 227	15 391
Granby town	Hartford	7 956	6 150	4 968	Waterbury town	Uitchfield	19 489	18 610	14 837
Greenwich town	Fairfield	59 578	59 755	53 793	Westbrook town	Middlesex	5 216	3 820	2 399
Grimsfield town	New London	8 967	7 763	6 472	West Hartford town	Hartford	61 301	68 031	62 382
Groton town	New London	41 062	38 244	29 937	West Haven town	New Haven	53 184	52 851	43 002
Guildford town	New Haven	17 375	12 033	7 913	Weston town	Fairfield	8 284	7 417	4 039
Haddam town	Middlesex	6 383	4 934	3 466	Westport town	Fairfield	25 290	27 318	20 955
Hartford town	New Haven	51 071	49 357	41 056	Wethersfield town	Hartford	26 013	26 462	20 561
Hartford town	Windham	1 322	1 129	934	Wilmington town	Tolland	4 684	3 755	2 005
Hartford town	Hartford	136 392	158 017	162 178	Wilbur town	Fairfield	15 351	13 572	8 024
Hartford town	Hartford	1 416	1 303	1 040	Windsor town	Uitchfield	10 641	11 106	10 496
Hartford town	Uitchfield	4 889	4 318	3 344	Windsor town	Windham	21 062	19 626	16 973
Hartford town	Tolland	3 815	1 900	1 819	Windsor town	Hartford	26 204	22 502	19 467
Hartford town	Uitchfield	2 505	1 900	1 686	Windsor Locks town	Hartford	12 190	15 080	11 411
Killingly town	Windham	14 519	13 573	11 298	Windsor town	New Haven	13 008	12 495	8 889
Killingworth town	Middlesex	3 976	2 435	1 098	Woodbridge town	New Haven	7 761	7 673	5 182
Lebanon town	New London	4 762	3 804	2 434	Woodbury town	Uitchfield	6 942	5 869	3 910
Ledyard town	New London	13 735	14 837	5 395	Woodstock town	Windham	5 117	4 311	3 177
Lisbon town	New London	3 279	2 808	2 019					
Uitchfield town	Uitchfield	7 405	7 399	6 264					
Lyme town	New London	1 822	1 484	1 183					
Madison town	New Haven	14 031	9 768	4 567					
Manchester town	Hartford	49 761	47 994	42 102					
Manchester town	Tolland	20 634	19 994	14 638					
Manchester town	Hartford	4 746	2 991	1 961					
Meriden town	New Haven	57 118	53 959	51 850					
Middlebury town	New Haven	5 995	5 542	4 785					
Middlefield town	Middlesex	3 796	4 132	3 255					
Middletown town	Middlesex	39 040	36 924	33 250					
Milford town	New Haven	50 898	50 858	41 662					
Monroe town	Fairfield	14 010	12 047	6 402					
Monroe town	New London	16 455	15 662	7 759					
Morris town	Uitchfield	1 899	1 609	1 190					
Moscow town	New Haven	26 456	23 034	19 511					
New Britain town	Hartford	73 840	83 441	82 201					
New Canaan town	Fairfield	17 931	17 451	13 464					
New Canaan town	Fairfield	11 260	6 991	3 255					
New Canaan town	Uitchfield	4 884	3 970	3 033					
New Canaan town	New Haven	126 109	137 707	152 048					
New Canaan town	Hartford	28 841	26 027	17 664					
New Canaan town	New London	28 842	31 630	34 182					
New Canaan town	Uitchfield	19 420	14 601	8 318					
Newtown town	Fairfield	19 107	16 942	11 373					

Exhibit #2

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that copies of the foregoing Comments on Notice of Proposed Rule Making and Order to Show Cause were delivered by first-class mail, postage prepaid, mailed this the 6th day of September, 1997 to the following:

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